Supreme Court, U. S.
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THE SUPREME COURT
OF THE UNITED STATES

NO. 77-321

Upper West Fork River Watershed Association, by Kenneth Parker, President, Lewis County, West Virginia,

Petitioner,

versus,

Corps of Engineers, United States Army, Department of Defense, United States Army, James R. Schlesinger, as Secretary of Defense, W. G. Delbridge, as District Engineer, Howard H. Callaway, as Secretary of the United States Army,

Respondents.

PETITION FOR WRIT OF CERTIORARI

LAVERNE SWEENEY
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207 WEST MAIN STREET
GRAFTON, WEST VIRGINIA

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REPORTS OF OPINIONS BELOW

Upper West Fork River Watershed Assoc., By Kenneth Parker, President, Lewis County, West Virginia, Plaintiff, v. Corps of Engineers, United States Army et al., Defendants, 414 F. Supp. 908 (1976).

JURISDICTION

The jurisdiction of this Court is invoked as a result of the United States Court of Appeals for the Fourth Circuit on the 9th day of May, 1977, affirming a summary judgment passed on the 3rd day of May, 1976 by the United States District Court for the Northern District of West Virginia. A petition for rehearing was denied by the United States Court of Appeals for the Fourth Circuit on the 1st day of June, 1977. The statutory provision

which is believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari is 28 USC 2101 (c).

QUESTIONS FOR REVIEW

A. Was prejudicial error committed when statements in the affidavits in support of summary judgment and statements in the depositions were weighed, as well as when other material was weighed, in considering the respondents' motion for summary judgment?

B. Was a challenge to the respondents' motion for summary judgment waived?

C. Was prejudicial error committed in considering for summary judg-

ment material brought forward by the district court, which was not permitted to be challenged by the parties to this action?

D. Was prejudicial error committed in considering for summary judgment an uncirculated supplemental environmental impact statement?

E. Was prejudicial error committed in not striking from the record an uncirculated supplemental environmental impact statement?

F. Was a summary judgment correctly granted?

G. Was the respondents' environmental impact statement adequate?

CONSTITUTIONAL, STATUTORY,

and REGULATORY PROVISIONS INVOLVED

1. CONSTITUTION OF THE UNITED STATES AMENDMENT V:

No person shall be ... deprived of life, liberty or property, without due process of law ....

2. CONSTITUTION OF THE UNITED STATES AMENDMENT IX:

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

3. 42 UNITED STATES CODE 4232

The Congress authorizes and directs that, that to the fullest extent possible ... all agencies of the Federal Government shall ---

...

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and techinical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided whould the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable committements of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement the responsible Federal official shall consult with and obtain the comments of any federal agency which has jurisdiction by law or special expertise with respect to any environmental im-

pact involved. Copies of such statement and the comments and views of the appropriate Federal, State and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by Section 552 of Title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresloved conflicts concerning alternative uses of available resources.

...

4. 36 Federal Register, &7725

6. Content of environmental statement. (a) The following points are to be covered:

(i) A description of the proposed action including information and technical data adequate to permit a careful assessment of environmental impact by commenting agencies. Where relevant, maps should be provided.

(ii) The probable impact of the proposed action on the evironment, including impact on ecological systems such as wildlife, fish, and marine life. Both primary and secondary significant consequences for the environment should be included in the analysis. For example, the implications, if any, of the action for population distribution or concentration should be estimated and an assessment made of the effect of any possible change in population patterns upon the resource base, including land use, water, and public services, of the area in question.

(iii) Any probable adverse environmental effects which cannot be avoided (such as water or air pollution, undesirable land use patterns, damage to life systems, urban congestion, threats to health or other consequences adverse to the environmental goals set out in section 101(b) or the Act).

(iv) Alternatives to the proposed action (section 102(2)(D) of the Act requires the responsible agency to "study, develop, and describe appropriate alternatives to recommended

courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources"). A rigorous exploration and objective evaluation of alternative actions that might avoid some or all of the adverse environmental effects is essential. Sufficient analysis of such alternatives and their costs and impact on the environment should accompany the proposed action through the agency review process in order not to foreclose prematurely options which might have less detrimental effects.

(v) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This in

essence requires the agency to assess the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations.

(vi) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. This requires the agency to identify the extent to which the action curtails the range of beneficial uses of the environment.

(vii) Where appropriate, a discussion of problems and objections raised by other Federal, State, and local agencies and by private organizations and individuals in the review

process and the disposition of the issues involved. (This section may be added at the end of the review process in the final text of the environmental statement.)

(b) With respect to water quality aspects of the proposed action which have been previously certified by the appropriate State or interstate organization as being in substantial compliance with applicable water quality standards, the comment of the Environmental Protection Agency should also be requested.

(c) Each environmental statement should be prepared in accordance with the precept in section 102(2)(A) of the Act that all agencies of the Federal Government "utilize a systematic, interdisiciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment."

(d) Where an agency follows a practice of declining to favor an alternative until public hearings have been held on a proposed action, a draft environmental statement may be prepared and circulated indicating that two or more alternatives are under consideration.

(e) Appendix 1 prescribes the form of the summary sheet which should accompany each draft and final environ-

mental statement.

....

STATEMENT OF CASE
AND BASIS FOR FEDERAL
JURISDICTION

The respondents propose to build the Stonewall Jackson Lake Project at Brownsville in Lewis County, West Virginia, which will tenatively involve the construction of a high rise dam that would inundate 3,500 acres of land at full pool and that would involve the federal government taking 21,000 acres of land, which is inhabitated by approximately two thousand people. The petitioner is a West Virginia corporation composed of members living inside and outside the 21,000 acres, which is proposed to be

taken. The petitioner filed a suit in the United States District Court for the Northern District of West Virginia alleging the environmental impact statement, which was prepared by respondents pursuant to 42 U.S.C. § 4321 et seq. and the Council on Environmental Quality Guidelines, was deficient and the petitioner's Fifth and Ninth Amendment rights under the United States Constitution were violated.

At the heart of petitioner's case is its belief that the respondents failed to explore the construction of a watershed in conformity with 16 U.S.C. § 1001 et seq. as an alternative to the construction of a high rise dam, in order that the approxi-

mate 2,000 inhabitants of the 21,000 acre "take area" would not be forced to leave and in order that so much agricultural and forest land would not have to be inundated.

The District Court weighed the evidence presented on the watershed alternative. This weighing of the petitioner's evidence was apparent in the District Court's discussion with its reference to "scant items" on the watershed issue, including the "unsupported statement that 'watershed projects [are] a good way to provide flood protection' (Holt Aff't)" and the "speculative and conclusionary" report of the Department of Natural Resources. The District Court weighed other material, including a "1966 Report", which

is contended to have been properly before the District Court, against the previously mentioned affidavit and exhibit.

The District Court's classification of Holt's affidavit as an "unsupported statement," apparently ignored his occupation as a civil engineer. It also ignored specific facts and opinions based on these facts which were within the affidavit. Holt's affidavit showed the watershed is superior to the high rise dam, increasing safety, eliminating loss of farmland, not requireing relocation, etc. Holt's affidavit that "watershed projects [are] a good way to provide flood protection" was supported by his

training and study, and by his experience with the Polk Creek Project, which was completed in 1968.

The District Court's classification of the Department of Natural Resources (hereinafter referred to as D. N. R.) survey as "speculative and conclusionary" is a strange weighing of this evidence. The D. N. R. apparently did not have a specific proposal before it, as it would have had, if the E.I.S. had included a watershed project, and, further, the lack of clarity in the report could have been corrected at a trial which could allow in-depth inquiry into the feasibility which the D. N. R. found.

The District Court also weighed

the evidence on flood danger, dismissing the evidence favoring the Watershed Association, as found in Holt's affidavit (" ... since the Polk Creek Project was completed the stream has not been outside of its banks."), while giving considerable weight to the respondents' speculation about flood danger.

The petitioner in agreeing to and signing the Order of the District Court entered November 21, 1975, as set forth in the footnotes to the District Court's memorandum order (which is appended herein), intended that the submission of the case on cross-motions for summary judgment would be in lieu of the hearing set for November 21,

1975, and not in lieu of a trial on the genuine issues of material fact, if any, remaining after proper consideration by the court of the cross-motions. By submitting the case on cross-motions, the petitioner did not intend to suggest that the Court should be allowed to resolve any genuine issue as to any material fact through the summary judgment procedure.

The District Court prejudicially erred by considering and by relying in its memorandum opinion upon evidence, a document, which was not properly before the Court on the cross-motions for summary judgment. The document, is a public congressional document entitled West Fork River and Tributaries, West

Virginia, S. Doc. No. 109, 89th Cong., 2d Sess. (1966) (hereinafter referred to as the "1966 Report"). The District Court Judge characterized this 1966 Report, as an "important document" and as "supporting material" to "provide the more inquisitive or sophisticated reader with a detailed technical basis for the conclusions in the E.I.S." The Court relied on information found in the "1966 Report" in several places in the memorandum order.

The District Court, in its discussion of alternatives to the Stonewall Jackson dam, quotes extensively from the "1966 Report's" discussion of alternatives. This discussion is used by the District Court as it determines

why a "watershed program" was not listed as an alternative in the E.I.S.

The Court cites the "1966 Report", which "considered and rejected" some type of a watershed project, in making its determination that omission of the watershed project alternative in the E.I.S. did not violate the applicable standards for agency action.

The District Court also relied upon the "1966 Report" as the source of census data and population projections, as the source of cost projections for West Virginia's share of operations, as the source of its information about public hearings, and as the source of exitmates of potential flood damage, even though a watershed pro-

ject on one of the two streams flowing into Weston was completed in 1968, two years after the "1966 Report" was published.

The District ordered the Clerk of the Court to file the document with the records. This "1966 Report", on which the District Court so heavily relied, was not properly before the Court on the cross-motions for summary judgment. The document was not submitted by the parties, but was brought to the Court's attention by reference in a footnote in the General Design Memorandum, which was attached to the only deposition the petitioner took of the respondents, and was subsequently obtained by the District Court for its

consideration, without the knowledge of your petitioner.

Attached to the respondents' motion for summary judgment at the district court, was the "West Fork River - West Virginia Review of Environmental Features Relating to the Stonewall Jackson Lake Project" (hereinafter referred to as the "Review). The "Review" is a supplemental environmental impact statement in that it was a mutliple page expansion of the original environmental impact statement filed with regard to the proposed Stonewall Jackson Lake Project, that was published shortly prior to the originally scheduled November, 1975, hearing and the "Review" was never cir-

culated to any reviewing agencies, the petitioner objected to the District Court considering the "Review", but such objection was overruled by the District Court.

The environmental impact statement which was prepared by the respondents was deficient in:

1. not considering a watershed within the meaning of 16 U.S.C. §1001 et. seq. as an alternative;

2. using an interest rate of 3 1/4% to compute a benefit cost ratio;

3. misleading the decision-makers, with regard to flood damage in the area, since

the 1950 flood (a century flood) was used as the example to indicate annual damage;

4. failing to cite scientific literature for the conclusions contained in the environmental impact statement;

5. in failing to discuss certain adverse effects of the proposed high rise dam; and

6. that the public was not involved in the preparation of the environmental impact statement.

It is apparent that the watershed is potentially feasible according to the West Virginia Department of Natural Resources. It is also apparent that the Governor of West Virginia was interested in a feasibility study.

REASONS RELIED ON FOR GRANTING PETITION FOR WRIT OF CERTIORARI

There is no question that the respondents' environmental impact statement failed to consider a watershed project within 16 U.S.C. §1001 et. seq. as an alternative to the high rise dam. There is no question that the West Virginia Department of Natural Resources considers such feasible in light of the document filed at the time of submission of the case on briefs to the district court and in light of the exhibit

attached to petitioners petition for a rehearing which was filed at the United States Court of Appeals for the Fourth Circuit. What is in question is whether the manner in which the significance of omitting a watershed alternative was improperly handled by the district as "(s)ummary judgment is not to be turned into a trial by affidavit." Redman v. Warrener, 516 F.2d 766, 768 (1st Cir. 1975).

The district court took the position that by agreeing to submit the case on cross-motions for summary judgment that petitioner was precluded from opposing the granting of a motion for summary judgment in favor of the respondents. Indeed, even if the parties had wished the Court to decide the

entire case via the summary judgment proceedings, such a waiver of genuine issues would not have been permissible. The Court, not the parties, must determine whether there is a genuine issue of material fact; a determination by the parties that there is no such issue is not controlling. If there is a genuine issue as to a material fact, summary judgment is not available. Cram v. Sun Ins. Office, 375 F.2d 670, 673 (4th Cir. 1967).

Federal Rule of Civil Procedure Rule 56(c) clearly defines and limits the evidence which is appropriate in consideration of a motion for summary judgment by stating that "The judgment sought shall be rendered forthwith if

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Emphasis added.) The rule does not provide for utilization of additional information secured by the court sua sponte, and courts have consistently discouraged the use of additional evidence. Additional information gathered by the court "must not ordinarily be received in camera, without disclosure to the parties prior to decision, and without affording an opportunity to make appropriate response by answering affidavit or

otherwise. The matters to be considered by the district court in a summary judgment proceeding are limited to those authorized by Federal Civil Procedure Rule 56." United States ex. rel Barber v. Commonwealth of Pa., 429 F.2d 518, 520 (3rd Cir. 1970). No case sancitioning use of evidence beyond the scope of Federal Rule of Civil Procedure 56(c), such as the "1966 Report", has been found in any district or circuit court. Further, the Court's use of the "1966 Report" brings to the case the very problems set forth by the Court in Barber, supra. The report was received by the Court without disclosure to the petitioner, and without affording the petitioner an opportunity to

respond to the opinions and information set out in the report. This lack of opportunity to respond is especially critical and prejudicial since the report is now ten years old, and the petitioner, if given an opportunity to do so, could have supplemented and contradicted information contained therein, such as challenging whether the watershed project in the "1966 Report" was within the parameters of 16 U.S.C. §1001 et. seq. or challenging the conclusion since completion of subsequent projects on other streams in the area to be served by the proposed project.

The "Review" (uncirculated supplemental environmental impact

statement) was improperly before the district Court as petitioner's motion to strike the "Review" from the record was well founded.

In Natural Resources Defense Council, Inc. v. Callaway, 524 F.2d 79 (2d Cir. 1975), the circuit court agreed with the district court's finding that supplemental data and statements may be used to bolster an otherwise deficient E.I.S. ". . . . when the supplemental adequately remedies the deficiency or analyzes the impact of the proposed charge and is properly circulated among the appropriate agencies before a final decision has been reached." (Emphasis added) Callaway, supra, at 92. The requirement that

the supplemental statement be circulated for comment by the various agencies is a recurrent one. The district court in Callaway so held at 389 F. Supp. 1263, 1277 (D. Conn. 1974). Also, in I-291 Why? Assoc. v. Buns, 517 F. 2d 1077, 1081 (2d Cir. 1975), the E.I.S. was criticized as being too conclusory in its treatment of air and noise quality aspects. Subsequent air and noise studies were held to not cure the inadequacies because the studies were not circulated for review and comment. The second circuit held the E.I.S. inadequate and affirmed the granting of a motion for a prelininary injunction. The district court opinion in Buns relies upon Natural Resources

Defense Council, Inc. v. Morton, 337 F. Supp. 170 (D. D.C. 1972), as the basis for its holding on the need for circulation of the supplement. There the court held that by neither an addendum for comment and review by any other federal agencies, nor soliciting the views of federal, state, and local agencies on the addendum that §4332(2)(c) of NEPA was not complied with. Morton, supra, at 172. City of Romulus v. County of Wayne, 392 F. Supp. 573, 597 (E.D. Mich. 1975), also relied upon the language in Morton to the same result.

One case which appears to deviate from the above line is Sierra Club v. Morton, 510 F.2d 813 (5th Cir. 1975)

in which the court did not require that the probability analysis supplement which was referred to in the E. I. S. and stated in the E.I.S. to be available on request need not be "... subjected to the necessary comment and review procedures otulined by Section 102(2)(c) of NEPA." The Court reasoned that the decision maker would have the information before acting and the procedure had also alerted other interested parties to the existence of the hazard. The court concluded that due to the specialized nature of the information, the unique expertise of the agency involved, and the immediate need for the project to proceed, that the procedure used was not unacceptable.

The hazard was of a military nature and the agency was the Secretary of Defense. The need was for oil and gas drilling. Sierra Club would be easily distinguished from the case at bar as involving non specialized information, no unique expertise and a situation in which the uncirculated material was referred to by reference and stated to be available (as it is undisputed that the environmental impact statement before this Court makes no reference to the watershed alternative). Both Callaway opinions - 524 F.2d at 92 and 389 F.Supp at 1277 - contain language that the critical agency decision must be made after the supplement has been circulated, considered and

discussed in the light of the alternatives, not before. "Otherwise, the process becomes a useless ritual, defeating the purpose of NEPA, and rather making a mockery of it." Callaway, supra, at 92. Thus, even in the extreme case such as Sierra Club, the decision on the agency action must be made after consideration of the supplement. "An E.I.S. should not be simply a post hoc justification for a decision already made." Callaway, supra, at 1277. The district court went on to note that supplemental statements could be used after a preliminary decision is made, but the supplementals must be prepound and in good faith.

The District Court seemed to justify the use of such material by Afton Alps Inc. v. United States, 392 F. Supp. 543 (D. Minn. 1974). The Afton Court was reviewing an " ... informal decision-making ...." (Afton at p. 551) and "... the input into the decision-making process ...." (Afton, supra,). In such informal decision making "... the agency is not required to make specific findings to support its decision." (Afton, id). The matter in the case at bar differs substantially from Afton Alps, Inc. v. United States, in that it concerns the Court's review of a formal statement (the E.I.S.), which contained specific findings, which was sent to some govern-

mental agencies, which was commented on by governmental agencies, which was rewritten following comments made by governmental agencies and which was to be reviewed by the Court to determine its adequacy. The Review was not sent to any reviewing agencies, but was submitted directly to the Court.

The Petitioner filed a fimely objection to the "Review", which was overruled with the District Court stating the "Review" was of no consequence in its decision. Petitioner believes that in light of the previous paragraphs that the District Court erred and such error was prejudicial to their case because by considering such material the "due process"

clause of the Fifth Amendment to the United States Constitution was violated, just as it was when the District Court did not give petitioner a chance to respond to the "1966 Report".

The District Court should have granted a summary judgment, but it should have been for the petitioner, rather than the respondents. The impact statement must be a detailed statement according to 42 U.S.C. § 4332(C) 9i.e. "... marked by abundant detail or thoroughness in treating small items or parts.", Environmental Defense Fund v. Corps of Engineers, 331 F. Supp. 925 [D. C.C. 1971] [granting preliminary injunction], 348 F. Supp. 916, 932 [N.D. Miss. 1972]).

There appears to be two views as to what alternatives need be considered by the Courts. In Environmental Defense Fund v. Corps, 325 F. Supp. 744, 759 (E.D. Ark. 1971), (granting injunction) it was stated:

> Where experts, or concerned public or private organizations, or even ordinary lay citizens, bring to the attention of the responsible agency environmental impacts which they contend will result from the proposed agency action, then the §102 statement should set forth these contentions and opinions, even if the responsible agency finds no merit in them whatsoever. Of course, the §102 statement can and should also contain the opinion of the responsible agency with respect to all such viewpoints. The record should be complete. Then, if the decision makers choose to ignore such factors, they will be doing so with their

eyes wide open.

In Committee for Nuclear Responsibility v. Seaborg, id. at 787 (D.C. Cir. 1971). The other rule was stated as follows:

> When, as here, the issue of the procedure relates to the sufficiency of the presentation in the statement, the Court is not to rule on the relative merits of competing scientific opinion. Its function is only to assure that the statement sets forth the opposing scientific views and does not take the arbitrary and impermissable approach of completely omitting from the statement, and hence from the focus that the statement was intended to provide for the deciding officials, any reference whatever to the existence of responsible scientific opinions concerning possible adverse environmental effects....
>
> Only responsible opposing views need be included

> and hence there is room for discretion on the part of the officials preparing the statement; but there is no room for an assumption that is conclusive (original italicized instead of underlined).

In the case at bar the E.I.S. is deficient under both views. Under what petitioner considers the better rule as was set forth in the Arkansas decision, the E.I.S., before this Court is not a complete record as a result of the respondents' statement at the taking of their deposition that watersheds are not within the definition of flood plain management and therefore were not even considered as an alternative. The watershed is a commonly used approach to provide flood protection and recreational benefits with one being comple-

ted in 1968 on Polk Creek,(which is one of the three streams flowing into the city and that is within approximately ten miles from the 21,000 acres the respondents contemplate condemning). The E.I.S. is deficient under the District of Columbia decision as the watershed alternative is arbitrarily, impermissibly, and completely omitted from the E.I.S. before this Court, although it is a responsible opposing view. In the Arkansas case the Court noted at page 748 that

> (5) the statements do not adequately explore the "alternatives to the proposed action."
> ....
> (10) Neither the statements themselves, nor the evidence introduced indicates that the defendants (have complied with 42 U.S.C. 4332 [D]).

In Volume I of Comprehensive Survey of the Monongahela River which was prepared by the West Virginia Department of Natural Resources in 1973 and filed with the District Court it is noted at pages 384-385 that there were thirteen watershed and flood prevention projects in 1971 (i.e. the year the final draft was made) under various stages of construction and completion in the Monongahela River Basin (which Basin includes the Upper West Fork River). It is stated at page 285 that eight additional watershed projects were found to be potentially feasible, including the Upper West Fork River.

Petitioner believes a watershed project offers an alternate "optimum"

solution, and yet it is not even discussed.

> If there exists any alternative, which would satisfy all of the competing interests---that is, an alternative in which all of our citizens would "have their cake and eat it too"---this should be made explicit in any "detailed statement" required by NEPA.

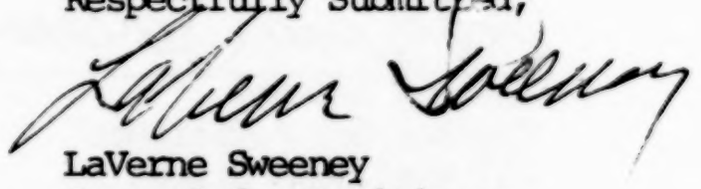
Environmental Defense Fund v. Corps of Engineers, 325 F. Supp. 749, 762 (E. D. Ark. 1970-71). The case at bar presents an alternative where the people can "have their cake and eat it too", as the people would not be displaced, the land, timber, cemeteries, schools, churches, coal, etc. would not be condemned or inundated, if a watershed project were utilized. The fail-

ure to include the watershed project as an alternative is in direct violation of NEPA's requirement to "(s)tudy, develop, and describe appropirate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources". 42 U.S.C. §4332 (D). The Seventh Circuit in Swain v. Brinegar, 517 F. 2d 766 (7th Cir. 1975) found the E.I.S.

> ...must realistically consider all reasonable available alternatives to the proposed project.... Analysis of these alternatives must be "detailed" and must reflect meaningful eveluation not only of purely local considerations, but of any significant national or world wife implications as well.

With this major failure to include a 16 U.S.C. §1001 et. seq. watershed, the respondents' environmental impact statement was inadequate and the district court and appellate court incorrectly ruled and this Court should grant petitioner's petition in order that the matter might be correctly resolved.

Respectfully Submitted,



LaVerne Sweeney
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above entitled cause by enclosing the same in an envelope addressed to each such attorney and Solicitor General of the United States at his or her respective address as disclosed by the pleadings and Supreme Court Rules of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Grafton, West Virginia, on the 29th day of August, 1977.

LaVerne Sweeney

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